

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 15-CR-111-WMC

ROBERT SHILTS,

Madison, Wisconsin

April 27, 2017

Defendant.

3:30 p.m.

* * * * *

STENOGRAPHIC TRANSCRIPT OF SENTENCING HEARING
HELD BEFORE THE HONORABLE WILLIAM M. CONLEY,

APPEARANCES:

For the Plaintiff:

Office of the United States Attorney
BY: ELIZABETH ALTMAN
Assistant United States Attorney
660 West Washington Avenue
Madison, Wisconsin 53703

For the Defendant:

Federal Defender Services of Wisconsin
Madison Branch Office
BY: JOSEPH BUGNI
22 East Mifflin Street, Ste. 1000
Madison, Wisconsin 53703

Also appearing:

Robert Shilts - defendant
Catherine Cwirla - US Probation Officer

Lynette Swenson RMR, CRR, CRC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 410
Madison, Wisconsin 53703

1 (Proceedings called to order.)

2 THE CLERK: Case No. 15-CR-111. *The United*
3 *States of America v. Robert Shilts* called for sentencing.
4 May we have the appearances, please.

5 MS. ALTMAN: Good afternoon, Your Honor. The
6 United States appears by Elizabeth Altman.

7 MR. BUGNI: Good afternoon, Your Honor. Joe
8 Bugni from Federal Defender Services appearing on behalf
9 of Mr. Shilts.

10 THE COURT: Very good. We are here for the
11 sentencing of Robert Shilts. And my first obligation,
12 Mr. Shilts, is just to confirm that you've read and
13 discussed the presentence report, the revised report, and
14 the addendum with your counsel. So have you had time to
15 review those things with your counsel?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. The government is moving
18 for a one-level additional reduction, I assume?

19 MS. ALTMAN: Yes, Your Honor.

20 THE COURT: And I will note because I received
21 such a detailed submission by the Federal Defender's
22 Office in this case making a number of policy arguments,
23 both general and specific, and also factual arguments,
24 both general and specific to this defendant, that if the
25 government wanted to submit a written response, I would

1 give you time to do that before I sentence.

2 MS. ALTMAN: I don't think that's necessary,
3 Your Honor. I'll just address them verbally. But thank
4 you for the opportunity.

5 THE COURT: All right. I will then accept the
6 plea agreement, finding that the offense of conviction
7 adequately reflects the defendant's criminal conduct.
8 The plea agreement does not undermine the statutory
9 purposes of sentencing.
10 In determining the defendant's sentence, I will take 11
11 into consideration the advisory sentencing guidelines as
12 well as the statutory purposes of sentencing that are set
13 forth in Sec. 3553(a). It is those statutory purposes
14 that control my sentence.

15 I note that neither party objected to the
16 presentence report, although the defendant provided
17 additional information which was included in the revised
18 presentence report and now raises a valid concern with
19 respect to enhancement for use of a computer in Sec.
20 2G2.2, which I will address.

21 Subject to that caveat, I find the probation office 22
22 has calculated the advisory guidelines correctly using
23 the current manual and taking into account all relevant
24 conduct under Sec. 1B1.3. The guideline for possession
25 of child pornography in violation of Sec. 2252(a)(4)(B)

1 is found in Title 18 -- I'm sorry, of Title 18 is found
2 in Sec. 2G2.2. The base offense level is 18 under
3 subsection 2(a)(1). A two-level increase is applied
4 under subsection 2(b)(2) because the defendant possessed
5 images that depicted sexually explicit conduct involving
6 prepubescent minors. No more levels are added under
7 subsection 2(b)(3)(F) because the defendant knowingly
8 engaged in distribution of those images. An additional
9 four levels are added under subsection (b)(4)(B) because
10 the images involved the sexual abuse or exploitation of
11 an infant and toddler.

12 Finally, as I already alluded to, under Sec.
13 2G2.2(b)(6), two levels are added because the offense
14 involved the use of a computer or interactive computer
15 service for receipt of the material.

16 As to this provision, I find the two-level increase
17 has not been adequately considered by the U.S. Sentencing
18 Commission. If anything, as time wears on, the specific
19 increase is becoming more and more or is becoming less or
20 less relevant because most received possession and
21 distribution of child pornography involves the use of a
22 computer or interactive computer services at this point.
23 Under Sec. 5K2.0, I will grant a two-level downward
24 departure in light of that fact.

25 This results in a total offense level of 23. Since

1 no other Chapter 2 adjustments apply, the defendant
2 qualifies for a three-level downward adjustment under
3 Sec. 3E1.1 because he has demonstrated acceptance of
4 responsibility for his offense. The government has moved
5 for the additional reduction.

6 With a total offense level of 20 and a criminal
7 history category of I, the defendant has an advisory
8 guideline imprisonment range of 46 to 57 months. And
9 that's where I will begin to consider an appropriate
10 sentence in this case. And I will hear first from the
11 government as to what that sentence should be.

12 MS. ALTMAN: Thank you, Your Honor. And before
13 I begin with that, I would like to inform the Court that
14 we have come to an agreement on the restitution amount.

15 THE COURT: I appreciate your mentioning that.
16 And what is the amount that you --

17 MS. ALTMAN: It is \$500.

18 THE COURT: All right. Which seems appropriate
19 given the defendant's financial status.

20 MS. ALTMAN: And I would also note that there
21 was only one image.

22 THE COURT: Understood.

23 MS. ALTMAN: So then with regard to sentencing,
24 Your Honor, as I indicated I am basically -- my argument
25 is going to be responding to things in the brief that the

1 defendant filed. There absolutely is no doubt that this
2 defendant has both physical and mental challenges. I
3 don't think anybody disputes that. And the sentencing
4 brief cites the evaluator's note that it ultimately
5 unable to provide a response, even after pausing for over
6 four minutes.

7 The report also indicated that when he was speaking
8 to his family, his responses occurred without significant
9 pause and that they were clear and logical. He was also
10 able to get a driver's license. He was also able to
11 engage and chat with the undercover agent. So we know
12 that he is able to learn. We know he is able to function
13 when he's doing things that he either has an interest in
14 or are more familiar to him.

15 THE COURT: And it's hard to know which it is.
16 The more familiar clearly is part of this.

17 MS. ALTMAN: Absolutely. But he was also able
18 to learn enough to pass a driver's test.

19 THE COURT: Right, right.

20 MS. ALTMAN: With regard to the activity with
21 the family member that's discussed on page four, there's
22 two separate incidents with the family member. The first
23 are the incidents that's described in the chats to the
24 officer that would have occurred when the defendant was
25 approximately 15 years old. And the sentencing memo

1 indicates that it's because his intellectual was far
2 beneath a normal 15-year-old, it's unlikely that this
3 happened --

4 THE COURT: What paragraph are you reading this
5 from?

6 MS. ALTMAN: It's page four, it's the third
7 paragraph.

8 THE COURT: All right.

9 MS. ALTMAN: The problem with this conclusion is
10 that the psychiatric report, which attached the
11 psychosexual report, indicates that this defendant was
12 already involved in inappropriate sexual contact at age
13 11 or conduct at age 11; that he perhaps --

14 THE COURT: Yes, I know what you're referring
15 to.

16 MS. ALTMAN: And yeah, with another child and
17 also pretending to masturbate. That's the first part of
18 the contact with the family member. The second part
19 isn't really addressed at all other than to simply deny
20 it. But if you look at the presentence report in
21 paragraphs 37 and 38, the family member was interviewed
22 in a forensic interview and gave interesting statements:
23 The first one being she was afraid to say anything
24 because she didn't think her family would believe her,
25 and sure enough, that's exactly what happened. She

1 reported some contact and they said oh, no. He would
2 never do that. That must have been a dream. But the
3 details were so specific: That her shorts were pulled
4 over to one side; the TV was off; and notably the family
5 put a lock on the door the next day. So while they're
6 trying to convince her it didn't happen, it appears that
7 they're less sure about that than their denials would
8 indicate.

9 With regard to -- and this is the last argument I
10 will make. I'm not going to address the guidelines. The
11 Court is aware of the guidelines as Mr. Bugni states in
12 here. These aren't new conclusions. There is a decision
13 by the Second Circuit that says that you can't rely on
14 the guidelines. I know that argument has been made
15 before. The use of the computer is one that we see all
16 the time. In possession cases though, the other
17 enhancements that this defendant is getting aren't really
18 standard. We have --

19 THE COURT: And I have included all of those.

20 MS. ALTMAN: So that's my comment with regard to
21 the guideline policy.

22 The final thing I would note, and this is on page
23 eight and it's the very bottom of the page, indicating
24 that due to his diminished capacity, "by definition they
25 have diminished capacity to understand and process

1 information, to communicate, to abstract from mistakes,
2 and to learn from experience, to engage in logical
3 reasoning and to control impulses." Controlling impulses
4 is where we have the problem here. The defendant did
5 say, it's included in paragraph 47, that if he had the
6 guts, he would probably touch the family member. And
7 then combine that with someone who has diminished
8 capacity to control his impulses and we have someone who
9 is a danger. I would, therefore, request the Court
10 sentence him accordingly.

11 THE COURT: Thank you, Counsel. Mr. Bugni.

12 MR. BUGNI: Thank you, Your Honor.

13 THE COURT: I have read with some care your
14 submission, which was very well crafted and persuasive in
15 a number of respects. I guess I don't share your
16 confidence to the possibility of the specific conduct
17 alleged, the hands-on conduct or reported as it being a
18 child fantasy, particularly given undisputed other
19 conduct when he was a child and the graphic descriptions,
20 which clearly exceeded what any actual contact that may
21 have taken place. But nevertheless shows tremendous
22 preoccupation. If either one of those weren't true, I
23 might share your view that I shouldn't give it any
24 weight. But I have both preoccupation -- severe
25 preoccupation, and a child who really had no reason to

1 raise it, who raised it initially outside of any concern
2 with regard to the defendant among the family members.
3 And the combination of the two makes it very difficult
4 for me not to weigh that as part of the risk that the
5 defendant presents.

6 MR. BUGNI: I don't discount that. Believe me,
7 I struggled with it and I was very careful with my words
8 and what I thought --

9 THE COURT: Again, I was -- I thought the
10 submission was wonderful and I hope Mr. Shilts
11 appreciates how hard you've worked on his behalf.

12 MR. BUGNI: I would add that even if you take as
13 true -- it's very difficult because you're in a federal
14 court. You're punishing for another crime. Is there --

15 THE COURT: It's not -- so we're clear, I'm not
16 punishing for another crime, I'm trying to decide what is
17 appropriate under all the circumstances and part of what
18 I am to consider under the statutory purposes are what
19 kind of a danger the defendant presents.

20 MR. BUGNI: And I think that damager can be 21
22 remedied. I mean there's going to be an eventual
23 release, and that remedy has to be with supervision,
24 with, you know, you have to follow the rules, you can't
25 be around young kids, you can't live in that house.

THE COURT: Well, and in fairness, that's also

1 not having a good solution at the moment, which you
2 pointed out --

3 MR. BUGNI: Yes.

4 THE COURT: -- is also a concern to the Court.
5 But the counterweight to that is, and you did a
6 tremendous job of laying them out, is that hopefully
7 there will be very limited opportunity and that the
8 consensus by all of the experts seems to be that he is a
9 low, at worst a moderate risk of any sort of reoffending
10 in that category. So I am -- I am trying to weigh all of
11 this, but I'm just, I guess, not as confident as your
12 submission might suggest I should be.

13 MR. BUGNI: I think even though that not
14 complete confidence in what I have offered, it's whether
15 it's sufficient but not greater than necessary. There
16 can never be those full assurances that we'd all want
17 that this would never happen. But part of it, we never
18 asked for bond in this case after these allegations. We
19 had a bond hearing and then I withdrew it. But we want
20 him away from the niece and we're trying to put together
21 that plan. That plan will have to be put together some
22 time. If this court were to sentence him to prison, it's
23 going to have to be a little bit down the road. But if
24 the major concern is how do we protect society, I think
25 we protect society through supervision. That's really

1 what supervision is there for. That's why I asked for
2 such a lengthy term. And that's why we really have
3 worked hard to put him in a group home and to put -- you
4 know, kind of get those strictures in place where he's
5 not going to be around juveniles; where he's not going to
6 be around minors. And if it's true, if it's not true, it
7 doesn't matter, we've ameliorated whatever risk there
8 could be. And I think that's what it comes down to,
9 like, what are we trying to punish here.
10 Because the traditional goals of punishment aren't 11
always going to be as effective on Mr. Schultz or Shilts.
12 Instead, it really becomes protecting the public and I
13 think you can protect the public with supervision. Is it
14 perfect? No, but there can never be perfection in that.
15 But we offer a very good solution with the halfway house
16 and giving him the opportunity to get into a group home
17 and have that.

18 So Your Honor, I don't think there's anything else I
19 can add to those points. I hope that I've alleviated
20 whatever lingering concerns you have. If there was a
21 perfect answer, I'd give it, but I don't believe there
22 is. But I just hope that what I've given is good enough
23 to let Mr. Shilts go to the halfway house and then from
24 there be able to reintegrate into society.

25 THE COURT: I'm not sure there is even a halfway

1 house that I could send him to today, but I understand
2 your general point that you think that's where he should
3 be.

4 Mr. Shilts, I am interested in hearing from you
5 today. First, anything that you'd like to tell me at
6 this time before I render sentence.

7 THE DEFENDANT: I am really sorry for what I
8 did.

9 THE COURT: You've been incarcerated now --
10 you've been at a jail for a year-and-a-half?

11 THE DEFENDANT: Yeah.

12 THE COURT: Mostly in Sauk County; is that
13 right?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. And generally you've
16 managed reasonably well it sounds like. I know it hasn't
17 been fun, but you've at least had some structure and
18 you're taking care of yourself it sounds like. How would
19 you describe it?

20 (Pause)

21 THE DEFENDANT: In what way? How would you want
22 me to describe it?

23 THE COURT: What would you say about it?

24 (Pause)

25 THE COURT: Mr. Bugni, maybe you can assist

1 because it's hard to know how much is processing and how
2 much is -- and I don't know if it's the -- if it's just
3 processing the permutations of what he could say or if
4 it's that he doesn't really have words. I just don't --
5 so if you could help me somewhat, I would appreciate it.

6 MR. BUGNI: Sure. Do you mind if I just ask him
7 a couple questions kind of --

8 THE COURT: Sure.

9 MR. BUGNI: Shiltsy, what do you like to do in
10 the jail?

11 THE DEFENDANT: I like to read books and put
12 puzzles together.

13 MR. BUGNI: And what about -- is there anything
14 else? What about anything that I send you?

15 THE DEFENDANT: I like to do word search
16 puzzles.

17 MR. BUGNI: And do you have any friends at Sauk?

18 THE DEFENDANT: Yes.

19 MR. BUGNI: And what was the nickname they gave
20 you?

21 THE DEFENDANT: My nickname is Mud Truck.

22 MR. BUGNI: And how are the guards? Do they
23 treat you okay?

24 THE DEFENDANT: Guards treat me pretty good.

25 MR. BUGNI: And what's your favorite meal there?

1 THE DEFENDANT: I would have to say the rice
2 dishes.

3 THE COURT: Anything that you dislike?

4 (Pause)

5 MR. BUGNI: Can I ask you something?

6 THE COURT: You're doing fine.

7 MR. BUGNI: Would you like to -- do you
8 sometimes wear leg braces? Are you supposed to wear leg
9 braces?

10 THE DEFENDANT: Supposed to.

11 MR. BUGNI: Would you like to be able to have
12 those back?

13 THE DEFENDANT: Yes.

14 MR. BUGNI: And what about do you like it when
15 they -- the guys don't let you watch NASCAR?

16 THE DEFENDANT: Yes.

17 MR. BUGNI: You like it when you can watch
18 NASCAR, but what about when they won't put it on?

19 THE DEFENDANT: I don't like that.

20 THE COURT: How is your back?

21 THE DEFENDANT: It hurts every so often.

22 THE COURT: Yeah. Are you getting your
23 medications?

24 THE DEFENDANT: Yes.

25 THE COURT: And does that help?

1 THE DEFENDANT: No.

2 THE COURT: Just the pain is there.

3 THE DEFENDANT: Yes.

4 THE COURT: You apologized here today. You said
5 you were sorry. What do you apologize for?

6 THE DEFENDANT: For everything that I did and
7 said on the Kik app.

8 THE COURT: You understand that stopping looking
9 at the images and talking to people about it is part of
10 what you have to learn to do. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: That might be the hardest thing
13 about this sentence, but you will be back in front of
14 another judge if you don't stop. You understand?

15 THE DEFENDANT: Yes.

16 THE COURT: I didn't see it anywhere in the
17 report. I know he's been evaluated a couple times now.
18 But any ongoing programming? Not at Sauk.

19 MR. BUGNI: No, Your Honor.

20 THE COURT: All right. I am prepared to render
21 sentence.

22 AGENT: Your Honor, I apologize for
23 interrupting. But just for the record, I believe that
24 the total offense level with acceptance and the two-level
25 departure is actually 23, not 20. But the guideline

1 range is still 46 to 57.

2 THE COURT: Well, the total offense level -- so
3 the actual -- with removing the last two points would get
4 me to 26. So if I don't give an enhancement with respect
5 to use of computer, that would make the total offense
6 level of 26 and then with the three-level reduction it
7 would be 23.

8 AGENT: Yes, I believe so.

9 THE COURT: I appreciate your correcting that.
10 That doesn't change -- the guideline imprisonment range I
11 had right, I just had not -- I had twice reduced the
12 three-level adjustment. All right. So it remains 46 to
13 57 months.

14 The defendant grew up in a intact household and
15 reported having a happy childhood, although it was
16 plainly an isolated one, punctuated by limited
17 interactions with his father who struggled with
18 alcoholism and his mother who had responsibility for
19 supporting the household through in-home care, which
20 meant that she was away.

21 As the defendant reports, his school years were also
22 marked by bullying, and what can be as bad, indifference
23 by his classmates. As a result, the defendant spent most
24 of his time whether by choice or not alone. While he
25 enjoyed outdoor activities with his family, he was placed

1 in special education activities at a early age, which
2 also contributed to his isolation, and continued
3 throughout high school, although he had apparently a
4 wonderful person assisting him in programming in high
5 school.

6 Despite his learning disabilities, teachers
7 expressed optimism that the defendant would lead a
8 successful life, although he was described by those who
9 knew him as isolated and quiet.

10 As a child, the defendant admitted to being involved 11
11 in several incidents of inappropriate and nonconsensual
12 sexual contact. The records confirm incidents of
13 sexually inappropriate behavior in school. The defendant
14 was able to gain a small group of friends in high school,
15 although he continued to spend most of his time away from
16 others. He admitted to viewing pornography for several
17 hours after school each day as a teenager, and despite
18 this, did graduate from high school, in part due to the
19 assistance that he received but also due to his own
20 ability.

21 He continued living with his parents after high
22 school. His brother, his brother's girlfriend, and his
23 niece also resided in the home.

24 The defendant obtained his first job working at a
25 car detailing shop. Unfortunately he lost that job due

1 to chronic physical health issues that inhibited his
2 ability to work. His physical condition worsened with
3 age, requiring medical treatment. And his mental health
4 has also deteriorated, apparently as a result of his
5 growing physical disabilities.

6 The defendant was placed on medication and has been
7 financially supported through disability.

8 As for the instant offense, undercover officers were
9 investigating the distribution of child pornography on a
10 messaging and chat room application called Kik. In
11 addition to receiving, the defendant also distributed at
12 least eight images of child pornography on Kik.
13 Additionally, he communicated with undercover law
14 enforcement officers in chat rooms where he explicitly
15 disclosed sexually assaulting a 10-year-old girl. Some
16 of that was clearly not true; however, the defendant
17 described at least some conduct that could have been
18 true. The defendant later stated to law enforcement that
19 the conduct he described was something he made up merely
20 to engage in chat and it's clear that at least some of
21 the conduct was exactly that.

22 On August 20, 2015, law enforcement executed a
23 search warrant at the defendant's residence and seized
24 several items of technology that the defendant used to
25 access pornography, child pornography. The defendant

1 admitted to both posting and viewing child pornography in
2 chat rooms, but denied any history of sexual contact with
3 juveniles once he himself became a juvenile. During the
4 investigation, a 10-year-old girl also reported to law
5 enforcement that the defendant touched her vagina while
6 she was sleeping. Her parents insist the assault was a
7 dream. This is an oddly specific dream and at least
8 suggested an inappropriate relationship existed between
9 the two, something that would also seem confirmed by the
10 parents placing a lock on her bedroom door the following
11 day.

12 The defendant agreed to a polygraph examination in
13 which he was found to be deceptive in his responses to
14 having sexual contact with minors, although it is
15 difficult to assess whether the defendant's processing
16 impairments may have contributed to that result.

17 Today the defendant is a 30-year-old man. He has
18 been incarcerated for this offense since August 20th of
19 2015. It's a very long time to be in a jail. Following
20 the defendant's arrest, he underwent psychological
21 evaluations at the request of defense counsel and by the
22 Court. Some of the information contained is conflicting;
23 nonetheless, it was determined that while the defendant
24 suffers from depression and limited cognitive
25 functioning, he was competent to stand trial as well as

1 capable of understanding the legal proceedings and
2 assisting in his defense.

3 The defendant's health problems and mental health
4 challenges appear to be effectively managed in a
5 custodial setting. The records reflect that he has been
6 able to function appropriately in the general inmate
7 population, which is not to minimize the challenges that
8 he will have incarcerated in a prison setting.

9 Even if this Court were to ignore the alleged
10 hands-on report of sexual contact with the minor, his
11 conduct in this offense would still be disturbing. The
12 defendant knew what he was doing and used specific search
13 terms to seek child pornography images. He posted images
14 as well as used nonpornographic images of a known female
15 child as bait. He knowingly joined a chat group that
16 shared child pornography images and he engaged in
17 egregious chats about sexually exploiting minors.

18 Finally, the defendant openly chatted about and
19 discussed images that depicted the abuse of children
20 ranging from infants to the age of ten.

21 The defendant is requesting a sentence that will
22 allow him to immediately return to the community in a
23 group home setting for the aged and disabled. Even if
24 appropriate, such a placement creates its own logistical
25 difficulties given his sex offender status. A specific

1 suitable group home has not yet been identified. It is
2 undetermined if a group home will house him as a sex
3 offender with all the vulnerable population of aging or
4 the disabled involved. There no doubt is a setting that
5 we could find, but there are third-party risks that will
6 be attendant and computer monitoring will be difficult,
7 as anyone who had a computer would be a potential source
8 for the defendant to access or to manipulate others to
9 access images.

10 While his family remains supportive, they have in 11
11 the past enabled and attempted to downplay his conduct
12 and that too is a concern. Supervision will certainly
13 provide the community protection, but the proper setting
14 and the proper treatment is part of the challenge that
15 the defendant will face.

16 While the defendant's mental and physical conditions
17 are extraordinary and place him, in the Court's view,
18 outside the heart line of a typical child pornography
19 case, under Sections 5H1.3, 1.4 and 5K2.0, it could also
20 be argued that his cognitive limitations increase the
21 risk he presents to the community. I do think on
22 balance, and the experts seem to agree, that he presents
23 a low risk in that regard, but that's not to say that
24 past behaviors, particularly voyeurism and inappropriate
25 touching and his viewing of pornography for several hours

1 a day as a teenager and the escalating conduct that
2 brings him before me does not raise a continued concern.

3 Taking into consideration the nature of the offense,
4 as well as the defendant's personal history and
5 characteristics, I am persuaded that a custodial sentence
6 of 36 months is reasonable and no greater than necessary
7 to hold the defendant accountable, protect the community,
8 provide the defendant the opportunity for rehabilitative
9 programs, and achieve parity with the sentences of
10 similarly situated offenders.

11 As to Count 1 of the Information, it is adjudged
12 that the defendant is committed to the custody of the
13 Bureau of Prisons for a term of 36 months. I recommend
14 that the defendant receive mental health treatment,
15 educational/vocational training, and most importantly sex
16 offender treatment and that the Bureau make a priority
17 his placement in an appropriate facility, both for that
18 purpose and in recognition of his own vulnerabilities.

19 I also recommend that he be afforded pre-release
20 placement in a residential reentry center with work
21 release privileges. This term of supervised release must
22 follow -- supervised release must be at least five years
23 under statute based on the nature of the offense here.
24 And the defendant's pattern of sexual behaviors began at
25 an early age, the term of imprisonment is to be followed

1 by a 15-year supervised -- 15-year term of supervised
2 release.

3 In light of the nature of the offense and the
4 defendant's personal history, I adopt the conditions 1
5 through 4, 7 through 9, 11 through 23, noting that
6 neither party raised objections to those proposals.
7 Given the history, I have no difficulty finding them
8 consistent with the Sentencing Reform Act of 1984.

9 Specifically the imposed conditions are warranted based
10 on all of the justifications set forth in the presentence
11 report, his offense of conviction, and his permanent
12 history requiring registration as a sex offender, and
13 abiding by travel and employment restrictions to other
14 states will be crucial to his monitoring, as will the
15 other rules requiring his supervision, compliance with
16 law, and notifying third parties of any risk that his
17 personal history may pose. He also has a documented
18 history of mental health and cognitive issues and will
19 likely benefit from treatment.

20 Finally, as has been noted by the probation office
21 as well as by the defense, there is a possibility that a
22 supervising officer can find resources for the defendant
23 that he has not been able to do on his own or through his
24 family that may well benefit him in the longer term.

25 I am inclined to add a third condition because I

1 want to be sure that at some point there is a proper
2 pre-release placement or a proper placement here. So if
3 the Bureau of Prisons is unable to place the defendant in
4 a pre-release placement, I do recommend as Special
5 Condition No. 24 that the defendant spend -- and I adopt
6 the first -- and order that he spend the first 180 days
7 in a residential re-entry center as approved by the
8 supervising U.S. probation officer. His absences from
9 the center for employment purposes, mental health
10 counseling and treatment, and for other passes consistent
11 with program rules should be allowed. He is to pay his
12 own medical expenses, if any, and is to pay 25 percent of
13 his gross income toward the daily cost of residence and
14 may be discharged early from the facility upon approval
15 of both the facility administrator, supervising U.S.
16 probation officer. I believe under the requirements I
17 will simply enter that as an additional condition.

18 I want to ensure that the defendant has a transition
19 into the community that is more structured than would be
20 otherwise, but I will consult with the probation office
21 as to whether that condition should be stated or if I
22 should leave it to the Bureau of Prisons in the first
23 instance.

24 With that, I note that there is some question as to
25 whether I should go through each individual condition

1 expressly as well as provide specific justification for
2 those conditions and I would defer to the defense as to
3 whether you want to waive that reading and individual
4 justification or if you want me to go through them
5 individually.

6 MR. BUGNI: Your Honor, we will waive that.
7 I've gone over that with Mr. Shilts and his mom.

8 THE COURT: Thank you. If, when the defendant
9 is released back into the community, either the defendant
10 or his family or the supervising probation officer
11 believe that any of the conditions no longer are
12 appropriate, I am certainly willing to consider a
13 revision and any may -- well, the defendant or the
14 probation officer may petition this court for a revision,
15 and if they do so jointly, it is likely I will grant it.
16 Regardless, I will consider it.

17 The instant offense is not drug related and the
18 defendant has no history of drug use, which is to his
19 credit. Therefore, the requirement for drug testing
20 under Sec. 3583(d) of Title 18 is waived. The defendant
21 is adjudged to pay a \$100 criminal assessment penalty to
22 the Clerk of Court for the Western District of Wisconsin
23 immediately following sentencing. And as for other
24 mandatory restitution, he is to pay in the amount of \$500
25 to the Clerk of Court for the Western District of

1 Wisconsin pursuant to Sec. 3664(d)(5) of Title 18. The
2 disbursements will go to Deborah A. Bianco, who
3 represents a Pia, Ava and/or Mya in Bellevue, Washington,
4 at the address indicated in the presentence report. The
5 defendant does not have the economic resources to allow
6 himself to make full payment of restitution -- actually I
7 think the address might be in the specific submission by
8 the victim. So regardless, the full address is adopted.
9 I do find he lacks the economic means to pay any -- 10
11 well, to pay full restitution in the foreseeable future
12 and therefore under Sec. 3664(f)(3)(B) of Title 18 he is
13 to begin making nominal payments of a minimum of \$50 each
14 month beginning within 30 days of his release from
15 imprisonment. The defendant shall notify the Court and
16 the United States Attorney General of any material change
17 in his economic circumstances that might affect his
18 ability to pay restitution. He does not have the ability
19 to pay any further fine under Sec. 5E1.2(c) without
20 impairing his ability to support himself upon release and
21 so I impose no additional fine.

22 The offense of conviction requires that the
23 defendant pay a \$5,000 assessment under the Justice for
24 Victims of Trafficking Act 2015 unless he is indigent.
25 The defendant has been appointed counsel and does not
have the financial resources to pay his assessment and

1 therefore I make that finding and deem the assessment
2 waived.

3 Final order of forfeiture is granted for the
4 property seized from the defendant as reflected in the
5 Court's earlier forfeiture order by statute. Finally,
6 the U.S. Probation Office is to notify local law
7 enforcement agencies and the State Attorney General of
8 the defendant's release to the community.

9 I believe there are no counts to dismiss. So
10 Mr. Shilts, my final obligation is to advise you that you
11 have a right to appeal my sentence. You have very
12 capable counsel who will assist you in filing a notice if
13 you and he decide that that's appropriate. But you only
14 have 14 days to do so, so you should discuss that with
15 him sooner rather than later and I am confident he will
16 talk that over with you as well.

17 Anything more for the government at this time?

18 MS. ALTMAN: Yes, Your Honor. He did plead to
19 an Information, so I believe I do need to move to dismiss
20 the first underlying Indictment.

21 THE COURT: All right. To the extent required,
22 then I dismiss the underlying Indictment.

23 Anything more for the defense?

24 MR. BUGNI: Nothing, Your Honor.

25 THE COURT: All right. Mr. Shilts, you're going

1 to spend an additional time in a federal prison. I will
2 make what efforts I can to see that that is a placement
3 where you can be part of a program that will further
4 evaluate and try to assist you in understanding this
5 compulsion that you have to look at these pictures and
6 ways to stop it -- for you to stop it, which is what
7 ultimately has to happen. You will spend time in a
8 residential re-entry center, either through the Bureau of
9 Prisons or by direction of the probation office, and
10 hopefully during that period you can find structure that
11 makes sense for you and puts you in the best position to
12 succeed going forward in your life.

13 You have a lot of wonderful qualities. Apparently
14 your last employer would welcome you back. I hope you
15 find a path that gives meaning to the rest of your life
16 and you can find a way to move away from watching images
17 that are only ensuring that more small children are
18 abused and that you no longer become a source of demand
19 for that.

20 With that, we are adjourned.

21 (Proceedings concluded at 4:18 p.m.)
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1 I, LYNETTE SWENSON, Certified Realtime and
2 Merit Reporter in and for the State of Wisconsin, certify
3 that the foregoing is a true and accurate record of the
4 proceedings held on the 27th day of April 2017 before the
5 Honorable William M. Conley, District Judge for the
6 Western District of Wisconsin, in my presence and reduced
7 to writing in accordance with my stenographic notes made
8 at said time and place.

9 Dated this 16th day of May 2017.

10
11 /s/-----

12 Lynette Swenson, RMR, CRR, CRC
13 Federal Court Reporter
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